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Attorneys for Defendant Michael Spicer

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

(Portland Division)

**RANDY RITMILLER, for himself and
derivatively on behalf of Spirit Enterprises of
Oregon, Inc. a nominal defendant ,**

Plaintiff,

v.

**MICHAEL SPICER, and SPIRIT
ENTERPRISES OF OREGON, INC., (dba Stan
the Hot Water Man), an Oregon corporation ,**

Defendant.

Civil No. _____

NOTICE OF REMOVAL

(PURSUANT TO 28 U.S.C. §§ 1332,
1441 AND 1446)

PLEASE TAKE NOTICE THAT defendant Michael Spicer (“Spicer”) hereby gives notice that the above action is removed from the Circuit Court of the State of Oregon for Multnomah County, in which said cause is now pending, to the United States District Court for the District of Oregon pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of this Notice of Removal, Spicer states as follows:

I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED.

A. Spicer is the only true defendant in an action now pending in the Circuit Court of the State of Oregon for the County of Multnomah, entitled Randy Ritmiller v. Michael Spicer, Case Number 1306-08821 (“Circuit Court Lawsuit”).

B. Plaintiff Randy Ritmiller (“Plaintiff”) filed a First Amended Complaint in the Circuit Court Lawsuit on or about December 5, 2014 and caused the First Amended Complaint to be served upon Spicer on December 5, 2014.

C. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it is filed within 30 days after Spicer was served with the First Amended Complaint from which it was first ascertainable that the case had become removable, and because an equitable exception applies to the one-year time limit for removal contained in 28 U.S.C. § 1446(c).

D. As required by 28 U.S.C. § 1446(a), a true and accurate copy of Plaintiff's Complaint and Plaintiff's First Amended Complaint, is attached hereto as Exhibit 1. Attached as Exhibit 2 is a docket report for the state court action listing the process, pleadings, and orders that have been filed or rendered in this action. Due to the large volume of filings, Spicer will coordinate with the Court to arrange for an efficient transmission of the state court file.

E. This Notice of Removal is properly directed to this Court pursuant to 28 U.S.C. § 1446(a), as it is the District Court embracing Multnomah County, Oregon, where Plaintiff's action is pending. 28 U.S.C. § 117.

F. In accordance with 28 U.S.C. § 1446(d), Spicer is promptly filing a Notice of this Removal with the Clerk of the Multnomah County Circuit Court, where Plaintiff's action is

pending, and giving written notice to the state court and all parties to the Circuit Court Lawsuit.

II. THIS COURT HAS FEDERAL DIVERSITY JURISDICTION.

A. Removal is proper because complete diversity of citizenship exists between the parties as of the time the First Amended Complaint was filed, and at the time of the filing of this Notice of Removal, and because the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000. 28 U.S.C. § 1332.

1. The Parties are Completely Diverse.

a. At the commencement of this action and at all times herein mentioned, as represented by Plaintiff in his First Amended Complaint, the Plaintiff is an Oregon resident and citizen. First Amended Complaint, ¶ 4.

b. Realignment of nominal defendant Spirit Enterprises of Oregon, Inc. ("the Corporation") as a party plaintiff is appropriate because the Corporation is the real party in interest. The Corporation has delegated all authority over the derivative claims to a Special Litigation Committee consisting of an independent director. Accordingly, maintaining the nominal defendant status of the Corporation for purposes of determining diversity is improper because the Corporation is not "antagonistic" to the interests of the shareholder plaintiff.

c. Spicer is a Washington resident and citizen.

d. The complete diversity of citizenship requirement under 28 U.S.C. § 1332(a)(1) has been satisfied because the action is between citizens of different states.

2. The Amount-in-Controversy Requirement is Satisfied.

a. Plaintiff's First Amended Complaint satisfies the jurisdictional requirement of 28 U.S.C. § 1332 because Plaintiff has alleged damages in excess of \$75,000. First Amended Complaint, ¶¶ 1, 12-14. On its face, Plaintiff's First Amended Complaint exceeds the \$75,000 threshold amount required by 28 U.S.C. § 1332(a). This Court therefore has jurisdiction over Plaintiff's claims alleged in the First Amended Complaint.

WHEREFORE, Defendant Spicer hereby removes the above-referenced state court action pending in Multnomah County Circuit Court to the United States District Court for the District of Oregon, where it shall proceed.

DATED this 16th day of December, 2014.

TONKON TORP LLP

By: /s/ Ryan Bledsoe

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Attorneys for Defendant Michael Spicer

CERTIFICATE OF SERVICE

I certify that on December 16, 2014, I served or caused to be served a true and complete copy of the foregoing **NOTICE OF REMOVAL** on the parties listed below as follows:

Peter C. Richter, OSB No. 711465

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Attorneys for Defendant Spirit
Enterprises of Oregon, Inc.

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED: December 16, 2014

TONKON TORP LLP

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